

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

# HOUSE BILL 2351

AN ACT

AMENDING SECTIONS 13-1812, 13-2008, 13-2009, 13-2010 AND 44-1693, ARIZONA REVISED STATUTES; AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 32; RELATING TO IDENTITY THEFT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-1812, Arizona Revised Statutes, is amended to  
3 read:

4 ~~13-1812.~~ Business records; subpoenas; applicability

5 A. The county attorney may issue a subpoena duces tecum to ~~a financial~~  
6 ~~institution to~~ obtain account records or ~~affidavits of dishonor~~ BUSINESS  
7 RECORDS in an investigation or prosecution of any violation of ~~section~~  
8 ~~13-1802, 13-1807, 13-2002, 13-2310 or 13-2311~~ THIS CHAPTER OR CHAPTER 20, 21  
9 OR 23 OF THIS TITLE. This section does not prevent the county attorney from  
10 obtaining a grand jury subpoena duces tecum for any of the suspect's records  
11 that are held by ~~a financial institution~~ AN ENTITY.

12 B. The subpoena shall identify EITHER the subject OR SUBJECTS of the  
13 investigation OR THE VICTIM OR VICTIMS IN THE INVESTIGATION, the account or  
14 accounts OR BUSINESS RECORD OR RECORDS under investigation and a specific  
15 time period that is relevant to the investigation or prosecution.

16 C. Account OR BUSINESS records may include copies of any account  
17 agreement between the ~~drawee financial institution~~ ENTITY and the subject OR  
18 VICTIM of the investigation, signature cards, monthly statements,  
19 correspondence or other records of communication between the ~~financial~~  
20 ~~institution~~ ENTITY and the subject OR VICTIM of the investigation.

21 D. An authorized representative of ~~a drawee financial institution~~ AN  
22 ENTITY may certify ~~bank~~ ANY records that are obtained by subpoena if all of  
23 the following apply:

24 1. The ~~bank~~ records are the regular account OR BUSINESS records that  
25 are used and kept by the ~~drawee financial institution~~ ENTITY.

26 2. The ~~bank~~ records are made at or near the time the underlying  
27 transactions occur in the ordinary course of business.

28 3. The ~~bank~~ records are made from information that is transmitted by a  
29 person who has firsthand knowledge acquired in the course of the ~~drawee~~  
30 ~~financial institution's~~ ENTITY'S regular course of business.

31 E. At a trial for a violation of ~~section 13-1802, 13-1807, 13-2002 or~~  
32 ~~13-2310~~ THIS CHAPTER OR CHAPTER 20, 21 OR 23 OF THIS TITLE, certified ~~bank~~  
33 records that are obtained by subpoena may be introduced in evidence and  
34 constitute prima facie evidence of the facts contained in the records.

35 ~~F. At a trial for a violation of section 13-1802, 13-1807, 13-2002 or~~  
36 ~~13-2310, an affidavit of dishonor may be introduced in evidence and~~  
37 ~~constitutes prima facie evidence of either:~~

38 ~~1. The refusal of a drawee financial institution to pay a check~~  
39 ~~because the drawer had no account or a closed account with the drawee at the~~  
40 ~~time a check was issued or passed.~~

41 ~~2. The refusal of a drawee financial institution to pay a check~~  
42 ~~because of insufficiency of the drawer's funds at the time a check was issued~~  
43 ~~or passed.~~

44 ~~G.~~ F. A certification of ~~bank~~ records ~~or an affidavit of dishonor~~  
45 that is acknowledged ~~by any notary public or other officer who is authorized~~

1 ~~by law to take acknowledgments~~ PURSUANT TO RULE 902(11), ARIZONA RULES OF  
2 EVIDENCE, shall be received in evidence without further proof of its  
3 authenticity.

4 G. THIS SECTION APPLIES TO ANY ENTITY THAT EITHER:

5 1. REGULARLY CONDUCTS BUSINESS IN THIS STATE.

6 2. OFFERS ITS SERVICES TO PERSONS IN THIS STATE.

7 3. PHYSICALLY EXISTS IN THIS STATE.

8 Sec. 2. Section 13-2008, Arizona Revised Statutes, is amended to read:

9 13-2008. Taking identity of another person or entity;  
10 classification

11 A. A person commits taking the identity of another person or entity if  
12 the person knowingly takes, purchases, manufactures, records, possesses or  
13 uses any personal identifying information or entity identifying information  
14 of another person or entity, including a real or fictitious person or entity,  
15 without the consent of that other person or entity, with the intent to obtain  
16 or use the other person's or entity's identity for any unlawful purpose or to  
17 cause loss to a person or entity whether or not the person or entity actually  
18 suffers any economic loss as a result of the offense.

19 B. On the request of a person or entity, a peace officer in any  
20 jurisdiction in which an element of the offense is committed, a result of the  
21 offense occurs or the person or entity whose identity is taken resides or is  
22 located shall take a report. The peace officer may provide a copy of the  
23 report to any other law enforcement agency that is located in a jurisdiction  
24 in which a violation of this section occurred.

25 C. If a defendant is alleged to have committed multiple violations of  
26 this section within the same county, the prosecutor may file a complaint  
27 charging all of the violations and any related charges under other sections  
28 that have not been previously filed in any precinct in which a violation is  
29 alleged to have occurred. If a defendant is alleged to have committed  
30 multiple violations of this section within the state, the prosecutor may file  
31 a complaint charging all of the violations and any related charges under  
32 other sections that have not been previously filed in any county in which a  
33 violation is alleged to have occurred.

34 D. This section does not apply to a violation of section 4-241 by a  
35 person who is under twenty-one years of age.

36 E. IF A DEFENDANT IS CONVICTED OF A VIOLATION OF THIS SECTION AND THE  
37 COURT SENTENCES THE DEFENDANT TO A TERM OF PROBATION, THE COURT SHALL ORDER  
38 THAT AS AN INITIAL CONDITION OF PROBATION THE DEFENDANT BE IMPRISONED IN THE  
39 COUNTY JAIL FOR A PERIOD OF NOT LESS THAN SIXTY DAYS. THIS JAIL TERM OF  
40 INCARCERATION SHALL NOT BE DEFERRED, DELETED OR OTHERWISE SUSPENDED AND SHALL  
41 COMMENCE ON THE DATE OF SENTENCING. THIS SUBSECTION DOES NOT APPLY TO  
42 PERSONS WHO ARE SENTENCED TO SERVE A PERIOD OF INCARCERATION IN THE STATE  
43 DEPARTMENT OF CORRECTIONS.

44 ~~E.~~ F. Taking the identity of another person or entity is a class 4  
45 felony.

1           Sec. 3. Section 13-2009, Arizona Revised Statutes, is amended to read:  
2           13-2009. Aggravated taking identity of another person or  
3                           entity; classification

4           A. A person commits aggravated taking the identity of another person  
5 or entity if the person knowingly takes, purchases, manufactures, records,  
6 possesses or uses any personal identifying information or entity identifying  
7 information of either:

8           1. Five or more other persons or entities, including real or  
9 fictitious persons or entities, without the consent of the other persons or  
10 entities, with the intent to obtain or use the other persons' or entities'  
11 identities for any unlawful purpose or to cause loss to the persons or  
12 entities whether or not the persons or entities actually suffer any economic  
13 loss.

14           2. Another person or entity, including a real or fictitious person or  
15 entity, without the consent of that other person or entity, with the intent  
16 to obtain or use the other person's or entity's identity for any unlawful  
17 purpose and causes another person or entity to suffer an economic loss of  
18 three thousand dollars or more.

19           B. In an action for aggravated taking the identity of another person  
20 or entity under subsection A, paragraph 1 of this section, proof of  
21 possession out of the regular course of business of the personal identifying  
22 information or entity identifying information of five or more other persons  
23 or entities may give rise to an inference that the personal identifying  
24 information or entity identifying information of the five or more other  
25 persons or entities was possessed for an unlawful purpose.

26           C. This section does not apply to a violation of section 4-241 by a  
27 person who is under twenty-one years of age.

28           D. IF A DEFENDANT IS CONVICTED OF A VIOLATION OF THIS SECTION AND THE  
29 COURT SENTENCES THE DEFENDANT TO A TERM OF PROBATION, THE COURT SHALL ORDER  
30 THAT AS AN INITIAL CONDITION OF PROBATION THE DEFENDANT BE IMPRISONED IN THE  
31 COUNTY JAIL FOR A PERIOD OF NOT LESS THAN TWO HUNDRED SEVENTY DAYS. THIS  
32 JAIL TERM OF INCARCERATION SHALL NOT BE DEFERRED, DELETED OR OTHERWISE  
33 SUSPENDED AND SHALL COMMENCE ON THE DATE OF SENTENCING. THIS SUBSECTION DOES  
34 NOT APPLY TO PERSONS WHO ARE SENTENCED TO SERVE A PERIOD OF INCARCERATION IN  
35 THE STATE DEPARTMENT OF CORRECTIONS.

36           ~~D.~~ E. Aggravated taking the identity of another person or entity is a  
37 class 3 felony.

38           Sec. 4. Section 13-2010, Arizona Revised Statutes, is amended to read:  
39           13-2010. Trafficking in the identity of another person or  
40                           entity; classification

41           A. A person commits trafficking in the identity of another person or  
42 entity if the person knowingly sells, transfers or transmits any personal  
43 identifying information or entity identifying information of another person  
44 or entity, including a real or fictitious person or entity, without the  
45 consent of the other person or entity for any unlawful purpose or to cause

1 loss to the person or entity whether or not the other person or entity  
2 actually suffers any economic loss.

3 B. This section does not apply to a violation of section 4-241 by a  
4 person who is under twenty-one years of age.

5 C. IF A DEFENDANT IS CONVICTED OF A VIOLATION OF THIS SECTION AND THE  
6 COURT SENTENCES THE DEFENDANT TO A TERM OF PROBATION, THE COURT SHALL ORDER  
7 THAT AS AN INITIAL CONDITION OF PROBATION THE DEFENDANT BE IMPRISONED IN THE  
8 COUNTY JAIL FOR A PERIOD OF NOT LESS THAN ONE YEAR. THIS JAIL TERM OF  
9 INCARCERATION SHALL NOT BE DEFERRED, DELETED OR OTHERWISE SUSPENDED AND SHALL  
10 COMMENCE ON THE DATE OF SENTENCING. THIS SUBSECTION DOES NOT APPLY TO  
11 PERSONS WHO ARE SENTENCED TO SERVE A PERIOD OF INCARCERATION IN THE STATE  
12 DEPARTMENT OF CORRECTIONS.

13 ~~C.~~ D. Trafficking in the identity of another person or entity is a  
14 class 2 felony.

15 Sec. 5. Section 44-1693, Arizona Revised Statutes, is amended to read:

16 44-1693. Access to reports by a consumer

17 A. ~~Upon~~ ON furnishing adequate credentials by a consumer as to ~~his~~ THE  
18 CONSUMER'S identity:

19 1. A creditor who denies credit to any consumer shall disclose to ~~such~~  
20 THE consumer the name and address of any consumer reporting agency ~~which~~ THAT  
21 has furnished ~~such~~ THE creditor with a consumer report on ~~such~~ THE consumer  
22 ~~which~~ THAT was considered by the creditor in making the determination.

23 2. A licensing agency ~~which~~ THAT denies a license to any consumer  
24 shall disclose to ~~such~~ THE consumer the name and address of any consumer  
25 reporting agency ~~which~~ THAT has furnished ~~such~~ THE agency with a consumer  
26 report on ~~such~~ THE consumer ~~which~~ THAT was considered by the licensing agency  
27 in making the determination.

28 3. An employer who denies a consumer employment, a promotion,  
29 retention as an employee or reassignment or does reassign the consumer,  
30 whichever is not to the advantage of the consumer, shall disclose to ~~such~~ THE  
31 consumer the name and address of any consumer reporting agency ~~which~~ THAT has  
32 furnished ~~such~~ THE employer with a consumer report on ~~such~~ THE consumer ~~which~~  
33 THAT was considered by the employer in making the determination.

34 4. A consumer reporting agency shall disclose to any consumer the  
35 contents of its file used for the purpose of making a consumer report on that  
36 consumer, any and all facts, allegations or sources ~~upon~~ ON which ~~such~~ THE  
37 information is based and the name and address of each person requesting a  
38 report on the consumer within the previous six months. A credit reporting  
39 agency may make the disclosures in the following manner:

40 (a) By a trained employee of the credit reporting agency when the  
41 consumer makes the request in person.

42 (b) By telephone if the credit reporting agency receives a written  
43 request for a telephone disclosure from the consumer. Any toll for the  
44 telephone disclosure shall be prepaid by the consumer or charged directly to  
45 the consumer requesting the telephone disclosure.

1 (c) By a decoded written copy of the file or a written copy of the  
2 consumer report with an explanation of any codes used if the credit reporting  
3 agency receives a written request for a written disclosure from the consumer.

4 B. A consumer reporting agency shall provide trained personnel to  
5 disclose the contents of its file to consumers during normal business office  
6 hours and assist a consumer in fully understanding all items on ~~his~~ THE  
7 consumer report.

8 C. The consumer shall be permitted to be accompanied by one other  
9 person of ~~his~~ THE CONSUMER'S choosing, who shall furnish reasonable  
10 identification, at such time as the consumer reviews the files of the  
11 consumer reporting agency as provided in this section.

12 D. No consumer reporting agency nor any creditor, licensing agency or  
13 employer shall request or require any waiver of rights by any consumer. No  
14 consumer reporting agency nor any creditor or any other person shall charge  
15 any fee to a consumer for a disclosure of ~~his~~ THE CONSUMER'S file if within a  
16 thirty-day period ~~prior to~~ BEFORE the request for a disclosure the consumer  
17 is denied credit, licensure, ~~OR~~ employment, ~~or received~~ RECEIVES a notice of  
18 collection or ~~received~~ RECEIVES other adverse action due to the credit  
19 report. Except as provided for in this subsection, a consumer reporting  
20 agency may charge a reasonable fee for any disclosures of a file to the  
21 consumer or ~~his~~ THE CONSUMER'S designee.

22 E. A PARENT MAY ACCESS THE CREDIT REPORT OF THE PARENT'S MINOR CHILD  
23 IN THE MANNER PROVIDED IN THIS SECTION.

24 Sec. 6. Title 44, Arizona Revised Statutes, is amended by adding  
25 chapter 32, to read:

26 CHAPTER 32

27 RECORD DISCARD AND DISPOSAL

28 ARTICLE 1. DISCARD AND DISPOSAL OF PERSONAL  
29 IDENTIFYING INFORMATION RECORDS

30 44-7501. Discarding and disposing of records containing  
31 personal identifying information; civil penalty;  
32 costs; affirmative defenses; enforcement;  
33 definitions

34 A. A BUSINESS SHALL NOT DISCARD OR DISPOSE OF A RECORD CONTAINING  
35 PERSONAL IDENTIFYING INFORMATION UNLESS THE BUSINESS DOES AT LEAST ONE OF THE  
36 FOLLOWING:

37 1. SHREDS THE CUSTOMER'S RECORD BEFORE DISCARDING OR DISPOSING OF THE  
38 RECORD.

39 2. ERASES THE PERSONAL IDENTIFYING INFORMATION CONTAINED IN THE  
40 CUSTOMER'S RECORD BEFORE DISCARDING OR DISPOSING OF THE RECORD.

41 3. MODIFIES THE CUSTOMER'S RECORD TO MAKE THE PERSONAL IDENTIFYING  
42 INFORMATION UNREADABLE BEFORE DISCARDING OR DISPOSING OF THE RECORD.

1           4. TAKES ACTIONS THAT THE BUSINESS REASONABLY BELIEVES WILL ENSURE  
2 THAT NO UNAUTHORIZED PERSON WILL HAVE ACCESS TO THE PERSONAL IDENTIFYING  
3 INFORMATION CONTAINED IN THE CUSTOMER'S RECORD FOR THE PERIOD BETWEEN THE  
4 RECORD'S DISCARD OR DISPOSAL AND THE RECORD'S DESTRUCTION.

5           B. A BUSINESS THAT VIOLATES SUBSECTION A OF THIS SECTION SHALL  
6 REIMBURSE EACH CUSTOMER WHOSE PERSONAL IDENTIFYING INFORMATION HAS BEEN  
7 WRONGFULLY DISCARDED OR DISPOSED FOR THE ECONOMIC LOSS AS DEFINED IN SECTION  
8 13-105 TO THE CUSTOMER, INCLUDING COSTS THAT ARE RELATED TO CORRECTING CREDIT  
9 ERRORS THAT ARE REASONABLY RELATED TO THE WRONGFUL DISCARDING OR DISPOSAL. A  
10 CIVIL PENALTY SHALL ALSO BE IMPOSED FOR EACH VIOLATION OF SUBSECTION A OF  
11 THIS SECTION ARISING OUT OF ONE INCIDENT. THE CIVIL PENALTY SHALL NOT EXCEED  
12 FIVE THOUSAND DOLLARS.

13           C. IT IS AN AFFIRMATIVE DEFENSE TO THE WRONGFUL DISCARD OR DISPOSAL OF  
14 A CUSTOMER'S RECORD THAT CONTAINS PERSONAL IDENTIFYING INFORMATION IF THE  
15 BUSINESS SHOWS THAT IT EITHER:

16           1. IS SUBJECT TO AND IN COMPLIANCE WITH FEDERAL LAW SPECIFICALLY  
17 ADDRESSING THE PROPER DISCARDING OR DISPOSAL OF CUSTOMER RECORDS.

18           2. USED DUE DILIGENCE TO PROPERLY DISCARD OR DISPOSE OF THE RECORD.

19           D. THIS SECTION MAY BE ENFORCED BY EITHER OF THE FOLLOWING:

20           1. A COUNTY ATTORNEY IN THE COUNTY IN WHICH THE CUSTOMER'S RECORD WAS  
21 WRONGFULLY DISCARDED OR DISPOSED. IF A VIOLATION AFFECTS CUSTOMERS IN  
22 MULTIPLE COUNTIES AND THE ATTORNEY GENERAL DOES NOT ENFORCE THIS SECTION  
23 PURSUANT TO PARAGRAPH 2 OF THIS SUBSECTION, A COUNTY ATTORNEY IN A COUNTY IN  
24 WHICH RECORDS WERE NOT PROPERLY DISCARDED OR DISPOSED OF, AFTER FILING A  
25 NOTICE OF INTENT TO ENFORCE THIS SECTION, MAY SEND A COPY OF THE NOTICE TO  
26 THE COUNTY ATTORNEY IN EACH COUNTY IN WHICH RECORDS WERE NOT PROPERLY  
27 DISCARDED OR DISPOSED OF AND MAY REQUEST THAT THE ACTIONS BE CONSOLIDATED.

28           2. THE ATTORNEY GENERAL IF THE WRONGFUL DISCARD OR DISPOSAL OCCURS IN  
29 MULTIPLE COUNTIES OR IF THE COUNTY ATTORNEY IN THE COUNTY IN WHICH THE RECORD  
30 WAS WRONGFULLY DISCARDED OR DISPOSED CONSENTS TO ENFORCEMENT BY THE ATTORNEY  
31 GENERAL.

32           E. THIS SECTION DOES NOT APPLY TO A PERSON THAT IS SUBJECT TO AND IN  
33 COMPLIANCE WITH:

34           1. TITLE V OF THE GRAMM LEACH BLILEY ACT OF 1999 (P.L. 106-102; 113  
35 STAT. 1338; 15 UNITED STATES CODE SECTIONS 6801 THROUGH 6809).

36           2. REGULATIONS IMPLEMENTING THE HEALTH INSURANCE PORTABILITY AND  
37 ACCOUNTABILITY ACT, 45 CODE OF FEDERAL REGULATIONS SECTION 160.03 (1996).

38           3. THE FEDERAL FAIR CREDIT REPORTING ACT, 15 UNITED STATES CODE  
39 SECTION 1681X.

40           F. FOR THE PURPOSES OF THIS SECTION:

41           1. "PERSON" MEANS A HUMAN BEING AND, AS THE CONTEXT REQUIRES, AN  
42 ENTERPRISE, A PUBLIC OR PRIVATE CORPORATION, AN UNINCORPORATED ASSOCIATION, A  
43 PARTNERSHIP, A FIRM, A SOCIETY OR AN INDIVIDUAL OR ENTITY CAPABLE OF HOLDING  
44 A LEGAL OR BENEFICIAL INTEREST IN PROPERTY.

1           2. "PERSONAL IDENTIFYING INFORMATION" MEANS:  
2           (a) A FIRST AND LAST NAME, A FIRST INITIAL AND LAST NAME OR A USER  
3 NAME OR LOG-IN NAME IN COMBINATION WITH A CORRESPONDING:  
4           (i) DATE OF BIRTH.  
5           (ii) PERSONAL IDENTIFICATION NUMBER.  
6           (iii) PASSWORD.  
7           (iv) PORTION OF A SOCIAL SECURITY NUMBER OF AT LEAST FOUR DIGITS.  
8           (b) AN INDIVIDUAL'S SOCIAL SECURITY NUMBER OR ANY IDENTIFICATION  
9 NUMBER THAT IS THE SAME AS OR INCORPORATES THE INDIVIDUAL'S SOCIAL SECURITY  
10 NUMBER.  
11           (c) AN INDIVIDUAL'S DRIVER LICENSE NUMBER OR NONOPERATING  
12 IDENTIFICATION LICENSE NUMBER.  
13           (d) ANY FINANCIAL ACCOUNT NUMBER OR CREDIT OR DEBIT CARD NUMBER WITH  
14 OR WITHOUT THE ACCESS CODE.